



APPENDIX

**"EXHIBIT A"**

No. 1767-7361

IN THE SUPREME COURT OF TEXAS

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CONTINENTAL STATE BANK OF  
BIG SANDY, ET AL,

vs.

W. E. FLOYD, ET AL

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MOTION FOR REHEARING

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*To The Honorable Supreme Court of Texas:*

COMES NOW the respondent, W. E. Floyd, and moves this Honorable Court to set aside its former ruling and opinion made and rendered herein on the 23rd day of March, A. D., 1938, and grant this respondent a rehearing herein and upon a rehearing and a reconsideration of the matters involved herein that this Honorable Court grant this respondent an order and decree in all things refusing the Writ of Prohibition applied for herein by the relators and for cause says:

The Writ of Prohibition directed by the judgment of this Honorable Court to be issued in this cause commands the respondents and each of them to desist and refrain from further prosecuting and proceed-

ings with petitions filed in the 71st and 124th District Courts of Gregg County, Texas, involving the subject-matter of this controversy.

The principal reason as recited in the opinion of this Honorable Court sustaining the relator's right to a writ of prohibition as against all respondents is the fact that there is no allegation in the petition filed in the 124th District Court of Gregg County, Texas, to the effect that in the original trial in the District Court of Gregg County, Texas, the issue as to the sale under the deed of trust by virtue of which the Continental State Bank of Big Sandy acquired title to the premises in controversy was not fairly presented and fairly tried.

This respondent says that at the time the petition for a bill of review was filed in the 124th District Court of Gregg County, Texas, he was not fully informed as to all of the facts surrounding and leading up to the sale of the properties involved herein, under the deed of trust, by virtue of which sale the said Continental State Bank of Big Sandy acquired its purported title to said lands. That since the filing of said petition for bill of review in the Honorable 124th District Court of Gregg County, Texas, this respondent has discovered new and additional evidence which this respondent verily believes if properly and fairly presented to a court of competent jurisdiction would lead to a verdict in favor of this respondent and that it can be shown and if this respondent is permitted to proceed with the trial in the 124th District Court of Gregg County, Texas, he will ask for and obtain leave to file a first amended orig-

inal petition in said court in which he will set up the new and additional facts which have been discovered since the filing of the original petition in said 124th District Court, and that if permitted to proceed to trial on said first amended original petition, this respondent verily believes he will obtain a judgment as against the Continental State Bank of Big Sandy recovering as against said bank the rights asserted in his petition. That the facts now known to this respondent which would have the effect, as this respondent believes, of invalidating the trustee's sale by virtue of which said Bank acquired its purported title were not known to respondent at the time of filing of the original petition for bill of review in the 124th District Court of Gregg County, Texas. That this respondent will be able to prove, if permitted to try said cause in the 124th District Court of Gregg County, Texas, that the said Continental State Bank of Big Sandy was guilty of such bad faith and fraud in proceeding with the sale of said property under deed of trust and in asserting title as against this respondent that would have the effect of entirely invalidating the purported title of the Continental State Bank of Big Sandy, and that the ends of justice would be served by permitting this respondent to litigate his rights in said suit, in presenting such additional and newly discovered evidence as is now in his possession.

WHEREFORE, this respondent prays that this Honorable Court grant him a rehearing in this cause; that he be allowed to file herein an amended motion containing a copy of his first amended original petition to be filed in the 124th District Court of Gregg County, Texas, and that this Honorable Court consider the same, and upon a full consideration of the same the Writ of Prohibition herein prayed for by the relators be in all things denied.

Respectfully submitted,

Wheeler Felts & Wheeler  
Attorneys for Respondent,  
W. E. Floyd

